

SUPREME COURT OF VERMONT
OFFICE OF THE COURT ADMINISTRATOR

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TO: Members of the Vermont Bar

FROM: Patricia Gabel, Esq., State Court Administrator

RE: Emergency Promulgated, Promulgated, Proposed Rules, List of Approved Financial Institutions and Miscellaneous Information

DATE: February 11, 2020

For your information, please find the following information:

- [Order Promulgating Emergency Amendment to the Application Section of the Vermont Code of Judicial Conduct](#)
- [Order Promulgating Amendments to Rule 6\(15\) and \(26\) of the Rules of the Supreme Court for Disciplinary Control of Judges](#)
- [Order Promulgating Amendments to Rule 40\(e\)\(4\) of the Vermont Rules of Civil Procedure, Rule 27.1\(b\)\(4\) of the Vermont Rules of Appellate Procedure, Rule 50\(d\)\(4\) of the Vermont Rules of Criminal Procedure, and Rule 40\(d\)\(4\) of the Vermont Rules of Probate Procedure](#)
- [Order Promulgating Amendment to Rule 62\(a\)\(3\)\(A\) of the Vermont Rules of Civil Procedure](#)
- [Order Promulgating Amendments to Rules 3, 7, 9, and 10 of the Vermont Rules of Small Claims Procedure](#)
- [Order Abrogating and Replacing the Vermont Rules for Mandatory Continuing Legal Education](#)
- [Order Promulgating Addition of Rule 6.2 to the Vermont Rules for Family Proceedings](#)
- [Proposed Order Amending Administrative Order No. 9, Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program](#)
- [Proposed Order Amending Rules 26, 34, and 78 of the Vermont Rules of Civil Procedure](#)
- [Proposed Order Amending Rule 4.3\(b\) of the Vermont Rules for Family Proceedings](#)
- [Proposed Administrative Order No. 48—Declaration of Judicial Emergency](#)
- Updated Court Forms
- Obligations Under A.O. 41
- eCabinet Registration

I. PROMULGATED RULE AMENDMENTS

- a. [Order Promulgating Emergency Amendment to the Application Section of the Vermont Code of Judicial Conduct](#)

This Order was promulgated on January 23, 2020; effective immediately.

The Application section is amended to exempt periodic part-time judges from Rule 3.15, which requires judges to submit a public annual income report. Because periodic part-time judges serve only sporadically, an annual report is both unnecessary and overly onerous. The emergency amendment took effect immediately so that periodic part-time judges would not be required to submit an income report for the 2019 calendar year.

Comments on this emergency amendment should be sent by **April 13, 2020**, to Emily Wetherell, Deputy Clerk of the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

- b. [Order Promulgating Amendments to Rule 6\(15\) and \(26\) of the Rules of the Supreme Court for Disciplinary Control of Judges](#)

This Order was promulgated on February 10, 2020; effective April 13, 2020.

The amendments to Rule 6(15) and (26) update the cross references to the Code of Judicial Conduct 2019, which became effective October 7, 2019.

- c. [Order Promulgating Amendments to Rule 40\(e\)\(4\) of the Vermont Rules of Civil Procedure, Rule 27.1\(b\)\(4\) of the Vermont Rules of Appellate Procedure, Rule 50\(d\)\(4\) of the Vermont Rules of Criminal Procedure, and Rule 40\(d\)\(4\) of the Vermont Rules of Probate Procedure](#)

This Order was promulgated on February 10, 2020; effective April 13, 2020.

The amendments update the cross references to the Code of Judicial Conduct 2019, which became effective October 7, 2019.

- d. [Order Promulgating Amendment to Rule 62\(a\)\(3\)\(A\) of the Vermont Rules of Civil Procedure](#)

This Order was promulgated on February 10, 2020; effective April 13, 2020.

The amendment to Rule 62(a)(3)(A) deletes a comma after the word “chattel” in the second line to eliminate an ambiguity regarding the timing of when an order for possession could be issued. The change is meant to clarify that the 14-day limit applies to issuance of an order of possession as well as to commencement of enforcement proceedings.

- e. [Order Promulgating Amendments to Rules 3, 7, 9, and 10 of the Vermont Rules of Small Claims Procedure](#)

This Order was promulgated on February 10, 2020; effective April 13, 2020.

Amended Rule 3, along with simultaneous amendments to Rules 7, 9, and 10 now requires that the plaintiff serve the defendant with a small claims default judgment.

Under the existing rules, the court has no good address for the defendant and therefore only sends a copy of the judgment to the plaintiff. However, Rule 7(a) provides for payment within 30 days of “entry of judgment,” meaning the date that the judgment is docketed. If no such payment is made, plaintiff may move for financial disclosure, and there is no requirement in Rule 7(a) that the plaintiff prove that the defendant has received or seen the judgment. The plaintiff is only required to file a certificate of service showing that the motion was sent to the defendant by regular mail. The plaintiff may also seek trustee process or a writ of execution, or may file a judgment lien, before the defendant knows of the judgment. V.R.S.C.P. 9. It is not until the next enforcement step (a motion for contempt for not complying with whatever order comes out of the financial disclosure hearing) that the plaintiff is required to have the sheriff personally serve the defendant. Even then, the

judgment itself is not served, only the judicial summons to come to the hearing. V.R.S.C.P. 8(b)(2). Rule 10(a) presents a similar problem with appeals.

Accordingly, amended Rule 3(f) requires service by sheriff or other authorized person and the filing of the return of service in every case before enforcement proceedings are taken. Amended Rule 3(g) conforms to the amendment of Rule 3(f).

Amended Rule 7(a)(1)(A) and (c) conforms to the simultaneous amendment of Rule 3(f).

Amended Rule 9(a), (b)(1), and (c) incorporates the appropriate 30-day period provided in Rule 10(a)(1) as simultaneously amended. If the defendant has appeared, enforcement proceedings may be undertaken within 30 days from the entry of judgment. If the judgment is a default judgment, the date is 30 days from the date of service on the defendant. The latter provision is intended to conform to the simultaneous amendment of Rule 3(f).

Amended Rule 10(a)(1) conforms appellate practice to the simultaneous amendment of Rule 3(f) requiring service of a default judgment on the defendant before enforcement proceedings are commenced.

f. [Order Abrogating and Replacing the Vermont Rules for Mandatory Continuing Legal Education](#)

This Order was promulgated on February 10, 2020; effective July 1, 2020.

The 2020 amendments to the Rules for Mandatory Continuing Legal Education are comprehensive and implement much of the ABA's February 2017 Model Rule for Minimum Continuing Legal Education.

Some of the changes include the following:

- Increasing the total number of credit hours per reporting period from 20 to 24.
- Replacing the prior distinction between live and self-study programming with three types of programming and definitions of each.
- Requiring attorneys to complete one credit hour of attorney wellness and one of diversity and inclusion programming in a reporting period.
- Adding a carryover provision so that attorneys can use excess credit from the second year of the reporting period in the next reporting period.
- Providing the MCLE Board with the authority to audit attorneys.

g. [Order Promulgating Addition of Rule 6.2 to the Vermont Rules for Family Proceedings](#)

This Order was promulgated on February 10, 2020; effective April 13, 2020.

The addition of Rule 6.2 provides a single procedure for mental-health proceedings under 18 V.S.A. Chapters 179 and 181 (Involuntary Treatment); 18 V.S.A. § 8840 (Commitment to the Commissioner for Custody, Care, and Habilitation); and 18 V.S.A. Chapter 215 (Guardianship Services for People with Developmental Disabilities). The rule delineates which civil rules apply in these proceedings, indicates the proper venue for these proceedings, addresses appointment of counsel, and includes provisions on scheduling, discovery, and consolidation. The rule allows electronic service and filing, either under existing means or pursuant to the 2020 Electronic Filing Rules.

II. PROPOSED RULE AMENDMENTS

(NOTE: THE FOLLOWING AMENDMENTS HAVE BEEN PROPOSED AND HAVE NOT BEEN APPROVED BY THE SUPREME COURT.)

a. [Proposed Order Amending Administrative Order No. 9, Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program](#)

The proposed amendments to A.O. 9 establish a Bar Assistance Program within the purview of the Professional Responsibility Board. The program will continue to provide guidance and educational programs on “traditional” legal ethics and professional responsibility. In addition, the bar assistance program will assist by:

- developing programs to educate judges, lawyers, legal professionals, law students, and the public on issues related to professional competence, professional responsibility, legal ethics, law practice management, and behavioral health issues that impact the practice of law;
- developing programs that promote lawyer wellness and educate judges, lawyers, legal professionals, and law students on issues related to the signs, symptoms, causes, and prevention of behavioral health issues that affect professional competence and impact the practice of law; and
- helping impaired lawyers and judges to begin and continue recovery.

The proposal assigns Bar Counsel with the responsibility for operating the Bar Assistance Program. Although Bar Counsel will continue to respond to ethics inquires, Bar Counsel will not have any role in screening formal disciplinary complaints. The proposal assigns this task to newly created Screening Counsel. The proposed rules contain a confidentiality provision, specifying that information related to the operation of the Bar Assistance Program is confidential.

Comments on these proposed amendments should be sent by **April 13, 2020**, to Michael Kennedy, Bar Counsel, at the following address:

Michael Kennedy, Bar Counsel
Professional Responsibility Program
32 Cherry Street, Suite 213
Burlington, VT 05401
Michael.Kennedy@vermont.gov

b. [Proposed Order Amending Rules 26, 34, and 78 of the Vermont Rules of Civil Procedure](#)

The proposed amendment to Rule 26(c)(2), regarding protective orders, adds the phrase, “for the discovery or disclosure,” for uniformity with the language of Federal Rule 26(c)(1)(B). Although, unlike the Federal Rule, disclosure is not mandatory under V.R.C.P. 26, the term is included because a scheduling order could require a disclosure.

The proposed amendment to Rule 34(b) adds language from F.R.C.P. 34(b)(2)(B) permitting the production of copies of requested material, rather than their inspection. The language was added to the Federal Rule in 2015 “to reflect the common practice.” See Federal Advisory Committee’s Notes to 2015 Amendment.

The proposed amendment to Rule 78(b)(1) adds language taken from Rule 7(a)(3) of the Rules of the United States District Court for the District of Vermont regarding the time for filing a memo in opposition to a motion. The proposal changes the time to respond to a dispositive motion—for summary judgment or dismissal—from 14 days to 30 days. The proposed 30-day response period

for all dispositive motions would provide consistency with the existing response period for motions for summary judgment under V.R.C.P. 56(b), as well as with the District Court Local Rule.

Comments on these proposed amendments should be sent by **April 13, 2020**, to Allan Keyes, Esq., Chair of the Advisory Committee on the Rules of Civil Procedure, at the following address:

Allan Keyes, Esq., Chair
Civil Rules Committee
Ryan Smith & Carbine, Ltd.
P.O. Box 310
Rutland, VT 05702 0310
ark@rsclaw.com

c. [*Proposed Order Amending Rule 4.3\(b\) of the Vermont Rules for Family Proceedings*](#)

The proposed amendment to Rule 4.3(b) deletes former paragraph (1) providing for a motion by a nonparty for relief from a parentage judgment. The proposal also deletes references to that motion in the caption and first sentence of subdivision (b), renumbers the amended first sentence as paragraph (1), and deletes the now superfluous caption of paragraph (2).

Former Rule 4.3(b)(1) was added by amendment in 2017 as a narrow response to the concern raised by the Supreme Court in Columbia v. Lawton, 2013 VT 2, 193 Vt. 165, 71 A.3d 1218, that existing law, 15 V.S.A. § 302(a), prohibited such a nonparty action in the absence of a constitutional claim. See Reporter's Notes to 2017 Amendment. Subsequently, the Legislature enacted the Vermont Parentage Act, 15C V.S.A. §§ 101-809, and repealed the prior statute involved in Columbia. 2017, No 162 (Adj. Sess.), §§ 1, 2. The Act was effective July 1, 2018, § 6, and, per § 5, in certain proceedings before that date. The Vermont Parentage Act is a comprehensive measure, setting forth procedural provisions and means of establishing parentage, and providing requirements of standing and time limits for proceedings by nonparties challenging adjudications, acknowledgements, and presumptions of parentage. Essentially, the Act renders obsolete former Rule 4.3(b)(1).

Comments on these proposed amendments should be sent by **April 13, 2020**, to Hon. Michael Kainen, Chair of the Advisory Committee on Rules for Family Proceedings, at the following address:

Hon. Michael Kainen, Chair
Windham Civil Division
PO Box 207
Newfane, VT 05345
Michael.kainen@vermont.gov

d. [*Proposed Administrative Order No. 48—Declaration of Judicial Emergency*](#)

Consistent with the Court's administrative responsibilities under the Vermont Constitution, proposed Administrative Order 48 effectuates the Court's ongoing emergency planning. When there is an emergency, the judiciary may be required to implement measures to ensure that litigants, staff, and judiciary personnel can access and participate in judicial proceedings. This may include modifying or suspending existing rules regarding time deadlines or the use of video, audio, or other technologies.

Comments on this proposed order should be sent by **April 13, 2020**, to Emily Wetherell, Deputy Clerk of the Vermont Supreme Court, at the following address:

Emily Wetherell, Deputy Clerk
Vermont Supreme Court
109 State Street
Montpelier, VT 05609-0801
emily.wetherell@vermont.gov

III. LIST OF APPROVED FINANCIAL INSTITUTIONS

a. List of Approved Financial Institutions

Rule 1.15B(a)(1) of the Vermont Rules of Professional Conduct requires lawyers to maintain their trust accounts only in financial institutions approved by the Professional Responsibility Board. Financial institutions which have not been so approved may obtain information as to how to become certified by contacting the Office of Disciplinary Counsel (802) 859-3000. For a complete list of Approved Financial Institutions, please click on the following link and select “Attorney Trust Accounts”:

<https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/professional-responsibility>

IV. MISCELLANEOUS

a. Court Forms

Court forms are constantly being updated. Please refer to the judiciary website for the most up-to-date forms, <https://www.vermontjudiciary.org/court-forms>.

Please use the link below to report any form question, concern or issue <http://www.vermontjudiciary.org/website-feedback-form> or you can access our Website Feedback program at the bottom of each web page.

b. Obligation under A.O. 41

Attorneys are reminded that an “attorney must report to the State Court Administrator within thirty days any change of the office mailing or electronic mail address” and that “[n]otice sent to a reported address is sufficient even if not received by the attorney because of failure to report the proper address or failure of delivery not caused by the court.” A.O. 41, § 4(c); see A.O. 44, § 1.

Please email those changes to JUD.AttyLicensing@vermont.gov. Your cooperation is very much appreciated.

To ensure you continue to receive these emails, please add JUD.AttyLicensing@vermont.gov to your Safe Senders list.

c. eCabinet Registration

Administrative Order No. 44 requires attorneys in active status to register up to three email addresses in **eCabinet** for purposes of receiving notices of hearing and other documents. *You may*

*include staff email addresses in the three email addresses that you specify. **eCabinet** registration is required whether you practice in court or not.*

If you have already registered in **eCabinet**, the email address(es) you provided as part of that process will be used.

If you have not already registered in **eCabinet**, please go to <https://efiling.eservices.crt.state.vt.us/>, click **Register Now**, and follow the simple prompts. Attorneys will need their attorney license numbers to register. Helpful information about the Attorney Email Registration process is also available on the *Electronic Filing* page of the judiciary website at <https://www.vermontjudiciary.org/about-vermont-judiciary/electronic-access/electronic-filing>. Please contact jud.helpdesk@vermont.gov or call the Helpdesk at 802-828-4357 with any questions in the meantime.

You are also reminded that you are required to update the email address(es) and other contact information you have registered as soon as there are any changes, including changes to staff email addresses you may have included with your registration. To revise the information, please go to <https://efiling.eservices.crt.state.vt.us/>, log into **eCabinet**, click “**Account**,” choose “**My Profile**,” and make the necessary changes to your contact information.

Notification to JUD.AttyLicensing@vermont.gov or in **eCabinet** of a change to your contact information does not automatically notify the other. It is your responsibility to notify both. If you are a member of the Vermont Bar Association, you will also need to separately notify the VBA.